Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	

AT&T CORP.
PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") hereby submits this Petition for Reconsideration ("Petition") of the Commission's *Third NRO Order on Reconsideration* issued in the above-captioned proceeding.[1/]

AT&T respectfully requests that the Commission reconsider its decision to permit incumbent local exchange carriers ("ILECs") to shift their costs of thousands-block number pooling to their interexchange competitors by adding them to access charges. AT&T continues to believe that requiring each carrier to bear its own carrier-specific pooling costs best satisfies the competitive neutrality requirements of the Communications Act ("Act"). Retaining the existing cost recovery scheme violates both Section 254(e), which requires the Commission to remove all subsidies from access charges, and Section 251(e)(2), which requires numbering administration costs to be recovered from all telecommunications carriers in a competitively neutral manner. Indeed, the excessive cost recovery access tariffs recently filed by the ILECs, which were subsequently suspended and set for investigation by the Commission, demonstrate that there is a considerable need to reevaluate the process by which ILECs may recover their number pooling costs.

1/ *In the Matter of Numbering Resource Optimization*, 17 FCC Rcd 4784 (2002) ("*Third NRO Order on Reconsideration*").

DISCUSSION

Permitting ILECs to recover pooling costs through access charges is unlawful, unfair, and anticompetitive. As such, AT&T has long advocated that all carriers should bear their own carrier-specific pooling costs. Such an approach would be competitively neutral, preserve agency resources, and encourage carriers to spend efficiently. While some of AT&T's concerns associated with pooling cost recovery initially were alleviated by the *Third NRO Order*'s insistence that the amounts involved in any such recovery would be minimal,[2/] the ILECs' recent tariff submissions make clear that they seek to recover substantial costs not properly attributable to pooling implementation. More importantly, consumers would benefit from a policy that promotes cost control because, in the end, they are the parties that will bear the costs of pooling through increased end user rates or surcharges. Accordingly, AT&T requests that the Commission reconsider its decision to permit ILECs to recover the costs of thousands-block number pooling through access charges.

The cost recovery scheme adopted in the *Third NRO Order* violates two different provisions of the Act. First, permitting incumbent LECs to recover pooling costs in switched access charges creates an impermissible subsidy in violation of Section 254(e). As the U.S. Court of Appeals for the Fifth Circuit has held three times, "the plain language of Section 254(e) does not permit the Commission to maintain any implicit subsidies."[3/] Pooling costs are not access-related costs, and therefore recovery of such costs in switched access rates constitutes an unlawful subsidy.

2/ *Numbering Resource Optimization*, 17 FCC Rcd 252, ¶¶ 25, 38-41 (2001) ("*Third NRO Order*").

3/ *COMSAT Corp*. v. *FCC*, ___ F.3d ___ (5th Cir. 2001); *Alenco Comm.* v. *FCC*, 201 F.3d 608, 623 (5th Cir. 2000); *Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393, 425 (5th Cir. 1999).

The Commission's contrary conclusion in the *Third NRO Order*[4/] that pooling costs are in fact "access-related" should be reconsidered and rejected. IXCs are in no sense the cost-causer, because IXCs (*qua* IXCs) do not generally seek or obtain numbers and thus have not caused the demand for pooling. Indeed, like local number portability ("LNP"), number pooling is not an access-related service, and therefore, the Commission should apply the same principles it applied in determining that LNP costs could not be recovered through access charges. While long distance carriers use the telephone numbers assigned to their customers to route calls, and thus will derive an indirect benefit from pooling, that fact does not warrant a cost recovery approach that forces them alone to subsidize the ILECs' pooling efforts.

In the *First NRO Order*, the Commission correctly determined that if it were to establish a pooling cost recovery mechanism for ILECs, the mechanism should adhere to the standards it previously established for LNP.[5/] In the LNP proceeding, the Commission squarely rejected the use of access charges to recover local number portability costs, and suggested that doing so would not be competitively neutral.[6/] The market conditions and reasoning that led to this conclusion are fully applicable to thousands block pooling cost recovery.[7/] Indeed, placing pooling costs in access charges may force long distance carriers who are also CLECs to "pay

---

4/ *Third NRO Order*, ¶¶ 34-36.

5/ *Numbering Resource Optimization*, 15 FCC Rcd 7574, ¶ 193 (2000) ("*First NRO Order*" and "*First NRO FNPRM*").

6/ *Telephone Number Portability*, 13 FCC Rcd 11701, ¶ 135 (1998) ("*LNP Order*") ("Because number portability is not an access-related service and IXCs will incur their own costs for the querying of long-distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges. Nor would it likely be competitively neutral to do so.").

7/ *See id.* ¶ 39 ("If the Commission ensured the competitive neutrality of only the distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering from other carriers. For example, an incumbent LEC could redistribute its number

twice;" first, by covering their own pooling expenses and, second, by absorbing a substantial portion of ILECs' costs. Moreover, a system that permits ILECs to earn supracompetitive profits on bottleneck facilities would be directly contrary to the Commission's often stated goal of reducing access charges to cost.[8/]

Cost recovery in access charges would also violate the competitive neutrality requirements established in Section 251(e)(2) of the Act. Section 251(e)(2) expressly requires numbering administration costs to be "borne by all telecommunications carriers on a competitively neutral basis."[9/] In contrast to that express command, the current system -- and the ILECs' proposed tariffs -- place hundreds of millions of dollars in pooling costs on only one segment of the industry, the IXCs.

When the Commission made its original findings that inclusion of pooling costs in access charges would be competitively neutral, it indicated that it believed that the "extraordinary" costs of implementing thousands block number pooling, if any, would be minimal. For example, in the *Third NRO Order*, the Commission concluded that "many of the costs associated with thousands-block number pooling are ordinary costs for which no additional or special recovery is

---

portability costs to other carriers by seeking to recover them in increased access charges to IXCs.").

8/ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"); *see also Texas Office of Public Utility Counsel, et al. v. FCC,* 183 F.3d 393, 425 (5th Cir. 1999) (holding ILECs' "flow through" of universal service contributions to IXCs via higher interstate access charges violates the statutory prohibition on implicit subsidies in Section 254).

9/ *See* 47 U.S.C. § 251(e)(2).

appropriate,"[10/] and the Commission repeatedly indicated that it expected that implementation of pooling would result in an overall *decrease* in costs for the ILECs.[11/]

In their recent tariff filings, however, the ILECs have made clear that they will seek to recover hundreds of millions of dollars in pooling implementation costs in switched access rates. To date, only three of the major price cap ILECs have filed tariffs seeking an exogenous adjustment for pooling implementation costs -- BellSouth, Qwest, and Sprint. The exogenous adjustments they seek, however, are enormous: BellSouth's tariff includes a $64 million increase, Qwest's $120 million, and Sprint's $80 million. These three proposed adjustments already exceed a quarter of a billion dollars, and extrapolated to the entire industry, exogenous adjustments for pooling costs could approach a half billion dollars, more than half of which is to be recovered through switched access rates.

Such a cost recovery scheme would impose a substantial competitive disadvantage on IXCs relative to other carriers, such as wireless carriers and the ILECs themselves. The Commission has acknowledged that traditional wireline IXCs and wireless carriers increasingly compete for the same customers, and that the growth of wireless carriers "appears to be causing a significant migration of interstate telecommunications revenues from wireline to mobile wireless providers."[12/] The ILECs' ownership interest in the wireless carriers makes this particularly troubling, because the ILECs benefit from potential increases in wireless subscribership that would be driven in part by the increased costs placed upon IXCs by their own cost recovery mechanisms. Permitting the ILECs to place the entire burden of pooling implementation costs

---

10/ *Third NRO Order*, ¶ 25.

11/ *See id.* ¶ 40 ("[u]nlike other mandates of the Commission, thousands-block number pooling may reduce network costs"); *see also id.* ¶ 25. That is why the Commission established a "rebuttable presumption that *no* additional recovery is justified." *Id.* ¶ 39 (emphasis added).

12/ *Federal-State Joint Board on Universal Service, et al.*, 17 FCC Rcd 3752, ¶ 11 (2002).

on long-distance users would cause substantial market distortions, in direct violation of the Act. Indeed, the massive exogenous adjustments proposed by the ILECs would have a further disproportionate impact on AT&T, which has the largest share of the long distance market. As such, the cost recovery scheme adopted in the *Third NRO Order* is the antithesis of competitive neutrality – and thus violates Section 251(e)(2).

Most of the parties addressing this issue in the Commission's NRO proceedings -- including the ILECs -- concurred that permitting recovery of pooling costs through access charges would be anticompetitive.[13/] For example, CompTel noted that Section 254 of the Act prohibits implicit support mechanisms, and that allowing this type of cost recovery would be counter to the Commission's principles of cost-based access charges.[14/] WorldCom similarly stated that recovering pooling costs through access charges would put both traditional long distance carriers and new competitors at a competitive disadvantage.[15/] Time Warner explained that this cost recovery approach would distort the market for interstate access and would permit the ILECs to recover pooling costs from services to which there are no competitive alternatives.[16/]

13/ *See, e.g.*, *First NRO FNPRM*, Comments of Bell Atlantic at 6; *First NRO FNPRM*, Comments of BellSouth at 19; *First NRO FNPRM*, Comments of U S WEST at 2. These ILECs generally support either a small increase in the end user charge currently in place to recover LNP costs, or a modest extension of the period during which the Commission will allow LECs to impose this end user charge. Although, as stated above, AT&T urges the Commission to require the ILECs to bear these costs themselves, augmenting the current LNP charge satifies the statutory requirement for competitively neutral recovery. *See also First NRO FNPRM*, Comments of CompTel at 9; *First NRO FNPRM*, Comments of GSA at 10; *First NRO FNPRM*, Comments of Joint Consumers at 40; *First NRO FNPRM*, Comments of Time Warner at 10; *First NRO FNPRM*, Comments of WorldCom at 20.

14/ *First NRO FNPRM*, Comments of CompTel at 9.

15/ *First NRO FNRPM*, Comments of WorldCom at 20.

16/ *First NRO FNPRM*, Comments of Time Warner at 10.

Finally, precluding the ILECs from recovering pooling costs through access charges would permit the Commission to provide additional and substantive direction that might be used to avoid lengthy and administratively burdensome proceedings to evaluate the ILECs' cost claims.[17/] Indeed, over the past few weeks, AT&T already has been required to devote countless personnel hours to reviewing and challenging the unjustified and excessive cost recovery claims made in just three of the ILECs' access tariffs. Although the Commission has suspended and set for investigation all the ILEC tariffs (with the exception of a second BellSouth tariff, which is still pending),[18/] the level of attention these filings require from IXCs and Commission staff -- especially under the Commission's expedited review schedule -- is wholly unacceptable. Rather than continue with this enormously burdensome exercise, AT&T urges the Commission to reconsider expeditiously its decision to permit pooling cost recovery through access charges.[19/]

17/ In the LNP tariff proceedings, the ILECs repeatedly ignored the Commission's clearly stated requirements and forced both the Commission staff and affected parties to comb through extensive tariff filings time and again to root out utterly untenable cost claims. Ultimately, the Commission disallowed roughly $900 million in costs claimed in ILEC LNP tariffs. *See FCC Investigation Produces Lower Number Portability Charges for Customers of U S West Communications, Inc.*, Public Notice (rel. July 9, 1999).

18/ *See, e.g.*, *BellSouth Tariff FCC No. 1, Transmittal No. 623, Qwest Tariff FCC No. 1, Transmittal No. 120*, WCB/PPD No. 02-08, Order, DA 02-747 (rel. Apr. 1, 2002); *Sprint Local Telephone Companies Tariff FCC No. 3, Transmittal No. 192*, WCB/PPD No. 02-10, Order, DA 02-898 (rel. Apr. 18, 2002).

19/ AT&T believes its petition is procedurally proper. While the effect of the Commission's decision on IXCs was not readily apparent at the *Third NRO Order* reconsideration deadline, it is obvious now that the ILECs' interpretation of the Commission's cost recovery rules differ from a plain reading of that order and could have an enormous impact on IXC access charges. Accordingly, the Commission should accept AT&T's Petition.

To the extent the Commission believes this Petition is untimely, however, AT&T respectfully requests that it nevertheless consider the important issues raised herein. On previous occasions, the Commission acknowledged that it should hear untimely petitions "if they raise substantial public interest questions." *See Application of Columbia Millimeter Communications, LP to Provide 39 GHz Point-to-Point Microwave Radio Service on Station WPNA659, Santa Cruz, California*, 15 FCC Rcd 10251, ¶ 9 (2000) ("*Columbia Order*"); *see also Applications of Gross Telecasting, Inc. For Renewal of Licenses of Stations WJIM, WJIM-FM, WJIM-TV,*

CONCLUSION

Lansing, Michigan, 55 FCC2d 295, n.1 (1975). This is certainly the case here -- both consumers and carriers will be adversely affected by the ILECs' ability to recover their costs through access charges. Moreover, the Commission has considered untimely petitions "within the time that the Commission could proceed on its own motion." *Columbia Order*, ¶ 9. Since the *Third NRO Order* petitions have not yet been placed on public notice, "the Commission retains jurisdiction to reconsider its own rules on its own motion." *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Board on Universal Service*, 12 FCC Rcd 22423, n.8 (1997) ("*Universal Service Order*"). The Commission also has the discretion to grant an untimely petition that was filed after the close of the record, but before a decision was reached, especially in those cases "where the public interest demand that the merits of such a deficient petition be considered." *Applications of Franklin D. R. McClure, et al., For Construction Permits*, 5 FCC2d 148, n.3 (1966).

In all events, if the Commission decides not to consider AT&T's Petition, it should reconsider, on its own motion, its decision to allow ILECs to recover pooling costs through access charges. *See, e.g.*, 47 C.F.R. § 1.108 (allowing the Commission to set aside any action on its own motion). For example, in its universal service proceedings, the Commission reconsidered, *sua sponte*, a portion of its previous decision that required universal service contributions to be collected on a quarterly basis. Significantly, while the Commission reconsidered its decision on its own motion for procedural purposes, the reconsideration *was based on a request* from an affected party to the proceeding. *See Universal Service Order*, ¶ 3.

For the foregoing reasons, AT&T respectfully requests that the Commission grant its Petition for Reconsideration and reconsider its decision to allow ILECs to recover pooling costs through access charges.

Respectfully submitted,

AT&T CORP.

/s/ James W Grudus
Mark C. Rosenblum
Stephen C. Garavito
James W. Grudus
Room 1126M1
295 North Maple Avenue
Basking Ridge, NJ 07920
908.221.6630 (voice)
908.630.2883 (fax)

Dated: May 6, 2002

CERTIFICATE OF SERVICE

I, Catherine Carroll, do hereby certify that on this 6th day of May, 2002, a copy of the foregoing "AT&T Corp. Petition for Reconsideration" was filed electronically with the Commission on ECFS and was served via e-mail on the following:

Qualex, Inc.
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dorothy Attwood
Wireline Competition Bureau
Federal Communications Commission
445 12 Street, SW
Washington, DC 20554

Pam Slipakoff
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C421
Washington, DC 20554

Diane Griffin
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tamara Preiss
Wireline Competition Bureau
Federal Communications Commission
445 12 Street, SW
Washington, DC 20554

/s/ Catherine Carroll
Catherine Carroll